

Questions for the Record
Senator Ted Cruz
Michael P. Boggs
Nominee, United States District Judge for the Northern District of Georgia
U.S. Senate Committee on the Judiciary

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I am faithful to the doctrine of *stare decisis* and the rule of law, being mindful and respectful of the proper and limited role of the judiciary within our democracy. Throughout my entire judicial career, I have committed to working hard, being prepared and diligent in managing my cases, and being mindful of the importance of each case to the litigants. I strive to decide cases fairly, impartially and without bias, and to apply binding precedent to the facts in a fair and impartial manner. Judges should be fair, open-minded, and not predisposed to any particular personal or public policy position and should treat all parties equally and with civility and respect. I am not familiar with the personal judicial philosophies of the Supreme Court Justices of the Warren, Burger, or Rehnquist courts sufficiently well to state which is most analogous with mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has used originalism to interpret the Constitution and recently used the original public meaning approach in *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would apply this and all other relevant precedent if confirmed.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: Under no circumstance would I overrule precedent. I have served as a state trial court judge and an appellate judge. I have adhered to the doctrine of *stare decisis* during the entirety of my judicial career. This ensures consistency and predictability to the rule of law. If confirmed, I am committed to continuing to honor the doctrine of *stare decisis* and to strictly following the controlling precedents established by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: During my judicial career, I have followed binding precedent fairly and impartially without regard to personal views or opinions. The *Garcia* case is binding precedent, and if

confirmed as United States District Court Judge, I would apply that precedent and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly, impartially and without regard to personal views or opinions.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three broad categories. Congress may (1) "regulate the use of the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and, (3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow binding Supreme Court and Eleventh Circuit precedent in analyzing the scope of Congress' authority under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008). These cases are binding precedent. If confirmed, I would apply these and other applicable Supreme Court precedent and Eleventh Circuit precedent defining the limits on the President's ability to issue executive orders or executive actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The United States Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Constitution that are "objectively, deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted) (internal quotation marks omitted). If confirmed, I would apply this and all other applicable United States Supreme Court and Eleventh Circuit precedent to guide the disposition of matters involving questions of "fundamental" rights for purposes of the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has held that a classification is subject to the heightened scrutiny analysis under the Equal Protection Clause when it "classifies by race, alienage, or national origin" or classifies "based on gender." *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications that "impinge on personal rights protected by the Constitution," are also appropriate for the application of heightened

scrutiny. *Id.* If confirmed, I would follow United States Supreme Court and Eleventh Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: Respectfully, as an appellate judge or if confirmed as a district judge, it would be inappropriate for me to express any opinion as to the anticipated use of racial preferences in public higher education. If confirmed as a United States District Court Judge, I would apply the precedent established in *Grutter* and in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), as well as binding precedent from the Eleventh Circuit, when addressing matters involving racial preferences in public higher education regardless of any personal views I may have.